



**National Association
of Independent Insurers**

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JULIE LEIGH GACKENBACH
ASSISTANT VICE PRESIDENT
GOVERNMENT RELATIONS

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445 12th Street, SW
Room TW-B204
Washington, DC 20554

RE: Comments of the National Association of Independent Insurers on Further Notice of
Proposed Rulemaking CG Docket No. 02-278

Dear Ms. Dortch:

The National Association of Independent Insurers (NAII) offers the attached comments on the further notice of proposed rulemaking and proposed rulemaking CG Docket No. 02-278 to amend the Telephone Consumer Protection Act of 1991 (TCPA). The NAII is a leading property and casualty trade association representing over 715 member companies, writing more than \$101 billion in premium annually and comprising over 31 percent of the total market share. NAII member companies write all lines of coverage, including automobile, homeowners, workers' compensation, surplus lines and reinsurance, in all 50 states and the District of Columbia. The membership is comprised of every type of insurance company – stock, mutual, reciprocal and Lloyds, and the members utilize a variety of distribution systems and marketing techniques, including independent agents, captive agents and direct response marketing.

On behalf of our member companies, NAII respectfully submits the following comments and asks that they be made part of the official record.

Background

On September 18, 2002 the Commission released a Notice of Proposed Rulemaking seeking comment on whether the FCC's rules needed to be revised to more effectively carry out the directives of the Telephone Consumer Protection Act.¹ On March 11, 2003, the Do Not Call Implementation Act (Do Not Call Act) was signed into law requiring the Commission to issue a

¹ The Telephone Consumer Protection Act of 1991, P.L. 102-243, 105 Stat. 2394 (1991), codified at 47 U.S.C. Section 227.

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implementing regulations over a decade ago. In declining to establish a national Do Not Call list the commission acknowledged the cost and difficulty of establishing and maintaining such a list. The commission also noted that creation of such a list could jeopardize the security of proprietary information and the privacy of unpublished telephone numbers.

The same concerns acknowledged by the commission ten years ago remain equally valid today. Creation of a national registry would be costly and maintenance of the list in a timely and reasonably accurate manner will be difficult.

The frequency of changes in telephone numbers would present significant and costly problems. A significant percentage of telephone numbers change each year necessitating frequent and consistent updates to maintain the accuracy of any database. As a result, insurers seeking to use telemarketing as a form of marketing would be required to frequently access the revised database and update their records. The cost of such action would be significant and result in increased insurance costs for all Americans. Additional restrictions, such as limitations on the use of predictive dialers or pre-acquired account information, would likewise result in increased costs and reduced choice for American consumers.

The Federal Trade Commission recently promulgated regulations to establish a national Do Not Call registry.³ The FTC will begin accepting registrations on July 1, 2003 and the registry will go into effect on October 1, 2003. Regulations issued by the FCC should not be inconsistent with the rules issued by the FTC, but likewise they should not seek to expand the scope of the regulations to entities outside the jurisdiction of the FTC. NAII and our member companies object to creation of a parallel Do Not Call registry maintained by the FCC applicable to those entities outside the scope of the FTC list as an unwarranted intrusion into the state regulation of insurance.

Established Business Relationship

The TCPA implementing regulations provide exemptions for "established business relationships." The commission correctly concluded that solicitations by businesses with which the individual has a prior business relationship does not adversely affect the consumer's privacy interests. Established business relationship exemptions are essential in any regulations restricting marketing practices. In enacting the landmark Gramm-Leach-Bliley Act, PL 106-102 (Nov. 12, 1999), Congress imposed significant new restrictions on the use by financial institutions, including insurance companies, of customer information. However, Congress permitted the use and disclosure of such nonpublic personal information to "perform services for or functions on behalf of the financial institution, including marketing of the financial institution's own products or services, or financial products or services offered pursuant to joint agreements between two or more financial institutions that comply with the requirements imposed by the regulations prescribed under section 504 [15 U.S.C. § 6804], if the financial institution fully discloses the providing of such information and enters into a contractual

³ Telemarketing Sales Rule, Final Rule, Federal Trade Commission, 68 Fed. Reg. 4580 (Jan. 29, 2003)

agreement with the third party that requires the third party to maintain the confidentiality of such information." 15 U.S.C. § 6802(b)(2).

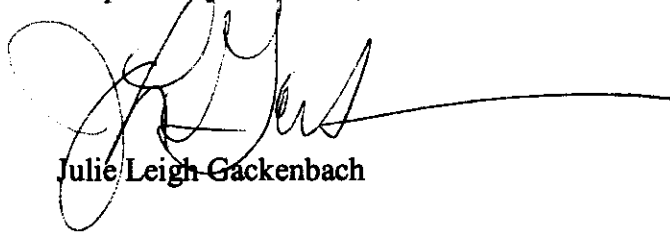
Even as Congress was enacting the nation's premier privacy statute, lawmakers recognized the legitimate need of financial institutions to market to existing customers and concluded that such activities did not threaten the privacy of individuals. The commission should not seek to impose any further restrictions on marketing to consumers with which the business has an established business relationship.

Conclusion

NAII strongly opposes any attempt by the commission to extend its regulatory oversight in this area over insurers. McCarran-Ferguson grants exclusive jurisdiction over insurance regulation to the states and each state has adequate oversight and supervision capabilities to protect the privacy of consumers. NAII also opposes the application of a national Do-Not-Call list to insurers. NAII strongly supports established business relationship exemptions from marketing restrictions.

NAII appreciates the opportunity to comment on the pending proposed rulemaking. On behalf of our more than 715 member companies and their hundreds of millions of policyholders, we urge the FCC to refrain from expanding jurisdiction under the TCPA to insurers, imposing national Do-Not-Call database restrictions on the highly regulated insurance industry, or restricting existing established business relationship exemptions. If you have any questions, please feel free to contact me at (202) 639-0473; julie.gackebach@naili.org or Kathleen Jensen at (847) 297-7800; kathleen.jensen@naili.org

Respectively submitted,

A handwritten signature in black ink, appearing to read 'Julie Gackebach', with a long horizontal line extending to the right.

Julie Leigh Gackebach